Office of Chief Counsel Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-1197-99

HPBonner

date: AUG 0 3 1999

to: District Director, New England District Attention: Group Manager Glen DiTulio

from: District Counsel, New England District, Boston

subject:

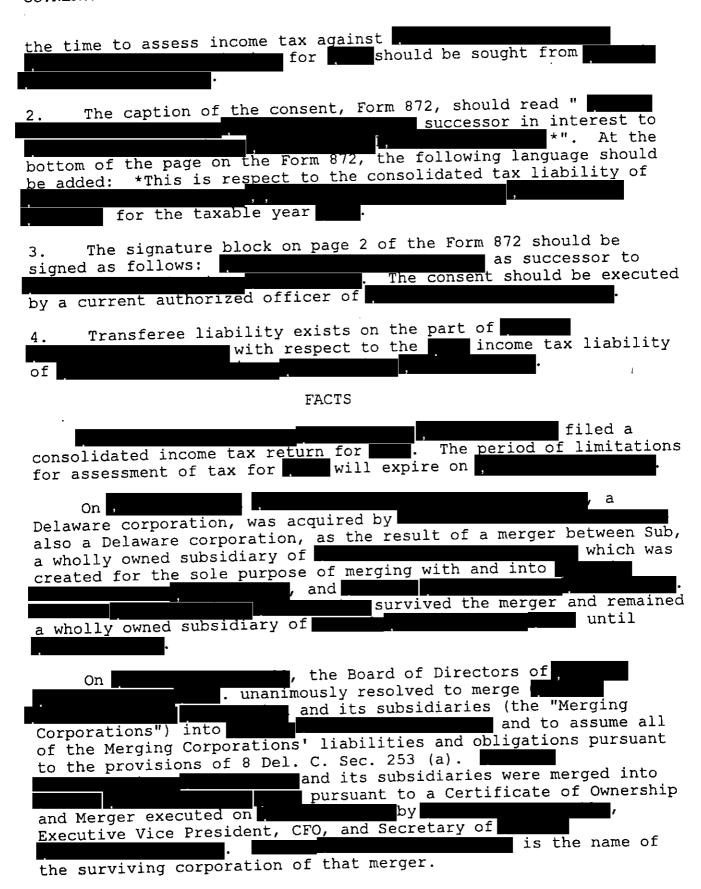
This refers to the memorandum from your office requesting advice with respect to extension of the period of limitations for assessment of tax of the income tax liability of for the calendar year ended

ISSUES

- 1. What are the appropriate forms to be secured, i.e. Form 2045, transferee Agreement; Form 977 consent to extend time Assessment Against a Transferee; and/or Form 872, consent to Extend Time to assess Tax?
- What is the proper language for the above forms?
- 3. Who should execute the forms?
- 4. Are there any other procedures available to protect the government's interest?

CONCLUSIONS

1.	was	the	common	parent for
the consolidated return year				
were acqu	ired k	оу 💹		
on .	as t <u>he</u>	e re	sult of	a merger
between Sub, a wholly owned subsidiary	of ,			
, and survived th	at me	rger	and re	mained in
existence as a wholly owned subsidiary	of			
differ and a second sec			and its	subsidiaries
merged	4		and its	- Gaborarar-
into itself pursuant to Delaware law. survived that merger. Therefore, a co	nsent	, Fo	rm 872,	to extend



of of a merger with	is now a wholly owned subsidiary, a Delaware corporation, as the result, a wholly owned subsidiary of which was merged into
merger.	on pursuant to Delaware law. is the surviving corporation of that

DISCUSSION

Under Delaware state law, two or more corporations may be merged into a single corporation, which may be any one of the constituent corporations; or may consolidate into a new corporation formed by the consolidation. 8 Del. C. Sec. 251(a). The corporation surviving after a merger or consolidation is called the "surviving" or "resulting" corporation. 8 Del. C. Sec. 251(b), et seq. Even if a merger agreement does not specifically state that the obligations of a merged corporation survive in its successors or assigns, it is Delaware public policy that the obligations of a corporation extinguished in a merger survive as obligations of the surviving corporation. Western Air Lines v. Allegheny Air Lines, 313 A.2d 145 (1973).

merged into In this case, pursuant to 8 Del. C. on Sec. 253 (a) which provides that the parent of a wholly owned subsidiary or subsidiaries may merge the subsidiary or subsidiaries into itself and assume all of its or their obligations by executing, acknowledging and filing with the Secretary of State of Delaware a certificate of ownership and merger. assumed all the liabilities of and subsidiaries pursuant to the resolution of merger unanimously adopted by its Board of directors on as set forth in the Certificate of Ownership and Merger and filed by . executed on with the Secretary of State of Delaware on Thus, is the successor to and, therefore, the proper party to give a waiver, Form 872, extending the period of limitations for assessment of tax with respect to the income tax liability of the consolidated group, , for successor in interest to should be shown on the consent, Form 872, as the taxpayer consenting to the extension of time to assess tax for the calendar

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for the taxable year
The signature block on page 2 of the Form 872 should be signed as follows: corporation. The consent should be executed by a current authorized officer of Rev. Rul. 83-41, 1983-1 C.B. 349 clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.
is a transferee of the assets of and subsidiaries as the result
of the statutory merger of and (the other members of the consolidated group for) into it. Therefore, we also recommend that you attempt to obtain Form 2045, Transferee Agreement, and Form 977, Consent to Extend Time to Assess Liability at Law or in Equity for Income, Gift or Estate Tax Against a Transferee or Fiduciary, from with respect to the consolidated income tax liability of they should be executed by an authorized officer of
In the event that you are unable to obtain a consent from , a notice of transferee liability should be issued to
In the event that the subsequently
In the event that, you should give consideration at that time to securing a form 977 and a Form 2045 from as well.
We recommend that you make sure that is still in existence on the date that the Form 872 is secured from it.

If you need additional assistance, do not hesitate to contact Hugh P. Bonner at (617) 565-7903.

MAUREEN T. O'BRIEN Assistant District Counsel

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Attorney